

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-KC-131
)	
The Moody Bible Institute of Chicago)	NAL/Acct. No. 200432560002
Licensee of FM Broadcast Station KMDY, Keokuk,)	
Iowa)	FRN 0006-7913-54
Chicago, Illinois)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: 2/13/2004

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find The Moody Bible Institute of Chicago (“Moody”), licensee of radio station KMDY, Keokuk, Iowa, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000.00) for willful and repeated violation of Section 73.1125(a) of the Commission’s Rules (“Rules”) and willful violation of Section 73.3527(c) of the Rules.¹ Specifically, we find The Moody Bible Institute of Chicago apparently liable for failing to maintain full time management presence at its main studio and failing to make available a complete public inspection file.

II. BACKGROUND

2. On June 23, 2003, an agent from the FCC, Enforcement Bureau, Kansas City Office (“Kansas City Office”), inspected the main studio of FM broadcast radio station KMDY, Keokuk, Iowa. The only station personnel present and on duty at the time the inspection began was Ms. Shirley Brobston, secretary. The station manager, Al Miller, was not on duty at the time the inspection began. Ms. Brobston telephoned Mr. Miller at home. Mr. Miller arrived at the station after the inspection had begun. Mr. Miller stated he had been off-duty at home. During the inspection, station personnel could not produce a station license, current station ownership report or copy of the public and broadcasting procedural manual. The most current ownership report in the public file was dated August 24, 1998. In addition, the issues-programs listing, dated April 1, 2003, did not contain all required elements, namely, the document did not contain the duration of the programming, a description of what was aired, or the time it was aired.

3. On July 15, 2003, the Kansas City Office issued a Letter of Inquiry (“LOI”) to Moody to obtain additional information pertaining to the EAS, chief operator, main studio and public file violations detected during the inspection.

¹ 47 C.F.R. §§ 73.1125(a) and 73.3527(c).

4. On August 29, 2003, Moody submitted a reply to the LOI. The reply stated the studio is open to the public Monday through Friday from 9am to 5pm. The letter stated that at the time of inspection, the staff at KMDY consisted of Al Miller, full time station manager, a full time secretary (who is also the full time church secretary), Tim Pfeifer, contract engineer, and six part time clerical/secretary volunteers. The reply stated that a new full time station manager and chief engineer had been hired since the time of inspection. Concerning the public file, the reply stated the public file was located in the main studio and that it was complete. However, the response later stated that the station license had not been forwarded to KMDY from its Chicago headquarters and was not in the file at the time of inspection. The reply included a copy of the latest ownership report, dated January 30, 2003, and a copy of the second quarter issues-programs listing. The issues-programs listing did not include the time the programs aired. The reply made no mention of the Public and Broadcasting procedural manual that was not available at the time of inspection.

5. On September 4, 2003, the Kansas City Office issued a second LOI to Moody to clarify certain issues pertaining to the EAS, chief operator, main studio and public file violations and subsequent responses by the licensee.

6. On October 3, 2003, Moody submitted a response to the second LOI. Concerning the main studio staffing, the response stated that station manager Al Miller averaged 10-15 hours per week between the transmitter site and studio on behalf of KMDY, and about 10-15 hours each week on call outside the studio, 7 days a week. The reply further stated that the station secretary Shirley Brobston worked 30 hours per week at the studio. The reply stated that both Mr. Miller and Ms. Brobston were unpaid volunteers. Concerning the chief operator, the reply indicated Tim Pfeifer had worked an average of 2-3 hours per week during the 12 weeks prior to the inspection. However, in another section of the letter, the reply stated that Mr. Pfeifer was chief operator until January 2003 at which time Al Miller took over those duties. Concerning the public file, the response stated that Moody could not explain why the current ownership report was not located in the public file folder labeled ownership reports. The reply stated the issues-programs listing inadvertently omitted the information on the time of day of the broadcasts listed.

7. In addition to the written response provided by Moody to the second LOI, the licensee provided requested documentation pertaining to training and instruction given to Al Miller concerning his duties. This information included an email dated January 12, 2001 from Mr. David P. Woodworth, Moody, and a set of guidelines dated January 2001 from Moody attorney Jeff Southmayd. These documents stated the office should be staffed for a standard 40 hour week, Monday through Friday, and that such staffing should include "at least one management-type person and one staff-type person on duty during regular office hours." The documentation further recommended "a minimum of two management type people" and that they should try to locate two other management type volunteers. The guidelines stated that the station authorization should be readily available at the primary transmitter control point. Item 11 of the guidelines, under the title "Public File" it states: The Public File should be organized... and should contain: ... c) Ownership Report: ... f) The Public and Broadcasting – A Procedural Manual.... G) Quarterly Issues/programs Lists: Every three months beginning January 10 each year for the preceding calendar quarter, list the programs along with the time, date and duration of each program on community issues given significant treatment."

III. DISCUSSION

8. Section 73.1125(a) of the Rules states that each AM, FM, or TV broadcast station shall maintain a studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in §73.208(a)(1). In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.² To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.³ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁴ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁵ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."⁶ Station KMDY broadcasts 24 hours a day, 7 days a week with audio provided via satellite from the Moody Bible Network. On June 23, 2003, and the 12 week period prior to that date, the licensee maintained one volunteer manager who worked an average of 10-15 hours per week between the studio and transmitter site and on call an additional 10-15 hours on average, 7 days a week. At the time the inspection began, the manager was off-duty at his home. The station's secretary, who also serves as the church secretary, was the only station personnel present. In addition to the manager and secretary, the licensee stated Tim Pfeifer was the KMDY chief operator. While a chief operator may be considered management personnel, statements by the licensee and station manager indicate Mr. Pfeifer had not worked for the station for several months prior to the inspection. While the licensee did maintain sufficient administrative staff to fulfill the full time obligation, Moody did not provide a full time management presence during the hours the studio was open to the public. According to documentation provided in response to the second LOI, Moody was aware of the requirement to maintain a full time managerial presence. Moody communicated this guidance to KMDY management in January 2001. Therefore, the violation was willful. In addition, this violation occurred for at least 12 weeks prior to the inspection; therefore, the violation is repeated/continuous.

² *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

³ *Id.*

⁴ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁵ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

⁶ *Id.*, 7 FCC Rcd at 6802.

9. Section 73.3527(a) of the Rules⁷ requires non-commercial FM broadcast stations to maintain for public inspection a file containing the material specified in paragraphs (e)(1) through (e)(11) of the same section. Section 73.3527(c) of the Rules requires the licensee to make the public file available for public inspection any time during regular business hours. On June 23, 2003, during regular business hours, Moody failed to make available a complete file for public inspection. The station's manager could not find the station license, current ownership report, the Public and Broadcasting Procedural Manual, or a complete issues-programs listing. The licensee admitted the license was not in the file and could not explain why the current ownership report was not in the file folder labeled for ownership reports. Though Moody states some documents may have been physically in or near the file at the time of inspection, the station manager could not find the missing documents.

10. Based on the evidence before us, we find Moody willfully⁸ and repeatedly⁹ violated Section 73.1125(a) of the Rules by failing to maintain a full time managerial presence at station KMDY and we find that Moody willfully violated Section 73.3527(c) by failing to make available for public inspection during regular business hours the complete public inspection file.

11. Pursuant to Section 1.80(b)(4) of the Rules,¹⁰ the base forfeiture amount for violation of main studio rules is \$7,000.00 and the base forfeiture amount for violation of the public file rules is \$10,000.00. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ In reviewing the history of this licensee, we find at least five Notices of Violation issued to Moody owned stations since 1999. We also note the failure to maintain a management presence was a continuous violation. However, the licensee did maintain some part time management presence and did have a public file with some required documents. Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

⁷ 47 C.F.R. § 73.3527(a).

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁹ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ 47 U.S.C. § 503(b)(2)(D).

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80 of the Rules,¹³ The Moody Bible Institute of Chicago is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000.00) for willful and repeated violation of Section 73.1125(a) of the Rules by failing to maintain a full time management presence at its main studio and for willful violation of Section 73.3527(c) for failing to make available for public inspection during regular business hours the complete public inspection file.

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, The Moody Bible Institute of Chicago SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to The Moody Bible Institute of Chicago, 820 N. LaSalle Blvd., Chicago, IL 60610 with a copy to their attorney, Jeffrey D. Southmayd, 1220 Nineteenth Street, N.W., Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

¹⁴ See 47 C.F.R. § 1.1914.

Robert C. McKinney
Kansas City Office, Enforcement Bureau

Attachment